

NEVADA DIVISION OF WATER RESOURCES ANNUAL NEWSLETTER TO LICENSED STATE WATER RIGHT SURVEYORS

May 2015



Carson City Office
901 S. Stewart St. Suite #2002
Carson City, NV 89701
775-684-2800

Southern Nevada Office
400 Shadow Lane #201
Las Vegas, NV 89106
702-486-2770

Elko Office
1250 Lamoille Hwy
Bldg 10 Suite 1047
Elko, NV 89801
775-753-3553

Winnemucca Office
815 East Fourth St. #7
P.O. Box 121
Winnemucca, NV 89446
775-623-6562

MESSAGE FROM JASON KING, STATE ENGINEER

Lake Tahoe Basin's snowpack is the lowest it's been in over 110 years of record keeping (3%); Lake Mead storage is at an all time low; farmers in the Truckee-Carson Irrigation District are only going to receive a 15-20% water delivery; farmers along the Lower Humboldt have already been cut-off from water deliveries for the year; 16 of the 17 state's counties have been declared Primary Natural Disasters Areas by the U.S. Department of Agriculture due to their exceptional drought status; and for the first time in the history of our office, we issued a curtailment order limiting 50% supplemental groundwater for irrigation in Smith and Mason Valleys (order was appealed to the district court which enjoined (stayed) it). Drought is everywhere you look and is a subject in just about every paper you pick up. Are we in the 4th year of a 4-year drought, or the 4th year of a 10-year drought? In a report released earlier this year by the U.S. Geological Survey, University of Arizona and Cornell University, there is an 80% chance that the Southwest will experience a decade-long drought over the next century, and even more worrisome, there is a 20% to 50% chance of a 35-year *megadrought* over the same time period. One thing that is for sure is that we all have to do our part to use water efficiently and conserve the little water we do have.

Because of the drought, our office has been busy processing temporary transfers of existing water rights, including moving water from fields that are being fallowed to other areas where farmers are trying to optimize this year's crop production. We are also busy working with well drillers in expediting well deepenings and replacements.

There are only a couple of weeks left in this 2015 legislative session. Thus far it has not been a good session for our water bills. Our office sponsored two bills, SB 65 and SB 81, and co-sponsored SB 485 with Senator Goicoechea. Senate Bill 65 was a lengthy, clean-up bill that did many good things, including modernizing the adjudication statutes. The bill died before making it out of the Senate. Senate Bill 485, which put a 10-year sunset date

on filing Claims of Vested Rights, also died even though there was no opposition to it when discussed last fall during the seven listening sessions our office held around the state. At the time of this writing, Senate Bill 81, which adds tools to the water law in dealing with groundwater management plans in critical management areas, is still alive and we are hopeful it will pass in order for office to best manage basins that are severely over-appropriated.

As mentioned above, our office held seven listening sessions last fall throughout the state. An initial report was published which broadly identifies the various topics discussed at the sessions. That publication can be found at <http://water.nv.gov/documents/DWR%20Listening%20Sessions.pdf>. A second publication is forthcoming that will highlight and examine some of the more pressing issues.

In closing, I cannot stress enough the importance of good stewardship of our most valuable resource – especially during a drought, and keep your fingers crossed for a very wet winter! Thanks for everything you do and have a great 2015!

Best Regards,
Jason King, P.E.

Water Right Surveyor License Renewals

If your annual renewal is not received on or before the June 30th deadline, your license will expire and you will be required to submit a renewal form with a \$50.00 filing fee for reissuance of your license. New references will not be required if your renewal application is received prior to September 30th. After September 30th, it will be necessary to file a new application with references. When your three references have responded, you will be issued a new Water Right Surveyor number.

Changes to Statutory Fees (NRS 533.435)

By now everyone should be aware that the 2013 Legislature authorized increases to most of the Division's fees and added several new fees. These fees have been in effect since July 1, 2013. When documents are submitted to this office in response to a deadline (e.g., extensions of time for proof of completion or proof of beneficial use) they are not considered to be submitted until they are "complete". That is, the document must be completed fully; including signatures, notary signatures when required. Plus, they must be accompanied by the proper fee. This means that if you submit a document that is complete in every way, except that you submitted the fee based on an old form, or old table of fees, it will not be considered as received. As a courtesy, we attempt to contact you to advise you that the submitted fee is incorrect. However, this does not relieve you of submitting the correct fee by the original deadline. To be sure you have the latest list of fees, look at our website where we have prominently displayed a notice that our fees have changed along with a list of those fees. Also, in the Forms Room on our website you will find the most up-to-date version of our forms, many of which have the required fee noted on that form. There may be upcoming fee changes concerning some permit fees and for the filing of *Proofs of Appropriation* coming out of the 2015 Legislature, stay tuned.

GIS Project Update

This past year we have finished our initial effort to map active water rights. Features were created for the active points of diversion (PODs) and places of use (POUs) for which maps had been filed with the State Engineer. These features are accessible using our web mapping application, available on our web page, <http://water.nv.gov/> under the Mapping & Data tab. We are keeping current by mapping new applications as they are submitted to our office and have begun to edit existing POUs of irrigation rights to reflect any changes that occur when they are certificated.

A few things to consider – Though we created features for only the active rights, over time, some of these features will represent rights that have become inactive due to cancellation, change applications, denials, forfeiture, or withdrawals. Currently, these features will continue to be displayed in the web map application. It is important to review the status of the water right linked to the feature. Be advised, there are many claims of reserved and vested right that do not have a map on file with the State Engineer; features were not created for these claims. There may be a water right associated with a particular location even though no feature (POD or POU) is displayed in our web map application. It is important to check the Water Rights database for possible filings in your area of interest.

Compliance Update

As the number of new Alleged Violation cases increases each year, the Division's Compliance and Enforcement Program continues to successfully obtain compliance with statutes, regulations and State Engineer's decisions pursuant to Nevada water law. During calendar year 2014, 37 new Alleged Violation cases were initiated which was twice the number in 2013, 28 alleged violators came into compliance, 7 Notice of Alleged violation warning letters were sent, 3 Finding of Alleged Violation and Violation Orders were

issued, 1 Hearing to Show Cause was conducted. To date, one penalty has been assessed for exceeding the allowed irrigated acreage and for irrigation outside of the permitted place of use.

Applications and Proofs of Beneficial Use for Stockwater

Applications for stockwater (new appropriations or change applications) and Proofs of Beneficial Use filed for stockwater permits now require the filing of a signed and notarized affidavit from the applicant or permittee stating that they meet the requirements of NRS 533.503. Please note that the affidavit is required for both private and public land, and the affidavit must be signed by the applicant or permittee. Affidavits signed by agents cannot be accepted.

Applications for Extension of Time

When submitting an Application for Extension of Time, please remember to address the actions taken by the permittee that demonstrate steady application of effort to complete the project and place the water to beneficial use. Whenever possible, provide specific numbers such as units served or acres irrigated and include actual meter readings of water used if applicable. Lack of steady application of effort may result in denial of the extension and cancellation of the water right.

Why Not Update the Ownership of a Water Right

Because bad things can happen when the ownership of a water right is not current. The Division is charged with keeping records of water rights ownership. Most all water rights that are perfected add substantial value to the appurtenant land and can be transferred with the land or be severed from the land and moved to a new place of use. Before an Application to Change can be permitted, both its base right and the new application must be in the same name. Differences in names sometimes have to be reconciled with Affidavits of Identity for individuals or business entities. Partial abrogations, multiple portions, incomplete land or water right descriptions or quantities, missing deed calls or typos of a metes and bounds traverse, name changes with divorce and marriages, assumed joint tenancies that don't exist, cancelations, probates, etc. are examples of things that can and do happen to alter valid ownership. Any older deeds not submitted for review that contains such errors, if not discovered by the parties themselves, become much harder to correct once our deeds technicians review them. The older the deeds and the more transactions that follow afterwards can make it difficult to resolve title without resorting to a court of competent jurisdiction in what is commonly known as a quiet title action. By not submitting deeds in a timely fashion according to NRS 533.382-386 you may unknowingly subject heirs or future successors in interest to an expensive legal process in which the outcome is unknown and has to be settled by a judge. We have seen many cases where *unintended consequences occur simply because deeds were not filed with us in a timely manner* according to law. While filing fees have increased over the years to cover the costs of review, it is still minimal compared to the actual value of the water or the cost of litigation. Not submitting one's records to our office in order to save the expense of Report of Conveyance filing fees is truly a false economy.

When we do complete recognition of a change of ownership, our office sends a confirmation letter acknowledging the change to the submitter. Because we can only take action based upon records that have been filed here, unfilled records often crop up later in attempts to reconcile errors. Therefore, our confirmation letters always contain the caveat of "Subject to receipt of additional documentation." A word to the water wise would be to always keep water right title up to date and mailing/e-mailing addresses current to receive any notices emanating from this office. The statutes clearly place the task upon the new owner to file their legal documents. Sellers or their agents should encourage their buyers to submit their paperwork with a *Report of Conveyance* to add them and replace sellers' names and addresses from receiving final notices after they have divested themselves of this asset and its requisite responsibility.

FEMA Updates Elevation Certificate Form

In July 2012, the U.S. Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) which calls on the Federal Emergency Management Agency (FEMA), and other agencies, to make a number of changes to the way the National Flood Insurance Program (NFIP) is run. Some of these changes already have occurred, and others will be implemented in the coming months. Key provisions of the legislation will require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. The changes will mean premium rate increases for some—but not all—policyholders over time. Homeowners and business owners are encouraged to learn their flood risk and talk to their insurance agent to determine if their policy will be affected by BW-12.

On March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act of 2014 into law. This Consolidated Appropriations Act of 2014 (Omnibus), prohibits FEMA through the National Flood Insurance Program (NFIP) from implementing Section 207 of the Biggert-Waters Flood Insurance Re-form Act of 2012. Section 207 directed FEMA to ensure that certain properties' flood insurance rates reflects their full risk after a mapping change or update occurs. Section 207 has not yet been implemented and is not related to changes to flood insurance rates that have already taken place. NOTE: The Omnibus does not roll back any rate in-creases that have already occurred as a result of Biggert-Waters. For more information, please see the following link: <http://www.fema.gov/media-library/assets/documents/90829>.

Of the many factors that determine the full risk rate of a structure, the single most important is the elevation of the structure in relation to the Base Flood Elevation (BFE). A community's Flood Insurance Rate Map (FIRM) indicates the area of the community that has a 1% or greater annual chance of flooding. That area is called the Special Flood Hazard Area. The National Flood Insurance Program (NFIP) Elevation Certificate (EC) is an administrative tool of the NFIP which is used to provide elevation information necessary to ensure compliance with community floodplain management ordinances, to determine the proper insurance premium rate, or support a request for a Letter of Map Amendment (LOMA). Elevation data reported on a FEMA EC must be certified by a licensed Engineer, Surveyor or Architect.

FEMA released an updated Elevation Certificate form in February of 2013 and all Elevation Certificate surveys should utilize the new form. FEMA will permit a "phase-in" of the revised EC on a voluntary basis. During the 12-month transition period which began August 1, 2012, FEMA will accept either the new form or the old form. Elevations certified after the last day of the transition period must be submitted on the new Elevation Certificate form with the expiration date of July 31, 2015. The new Elevation Certificate form is available online at: www.fema.gov/library/viewRecord.do?id=1383.

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NDWR in conjunction with FEMA Region IX staff, offered 5 four hour Elevation Certificate Training Courses in Washoe County, Elko and in Las Vegas. These classes were well attended. The NDWR Floodplain Management Program plans to offer this course again in 2016.

eLOMA Expedites FEMA's LOMA Process

The eLOMA is a web-based application within the Mapping Information Platform (MIP) that provides licensed land surveyors and professional engineers (Licensed Professionals) with a system to submit simple Letter of Map Amendment (LOMA) requests to FEMA. This tool is designed to make a determination based on the information submitted by the Licensed Professional and allow them to generate a determination from FEMA in minutes. The initial release of eLOMA will enable Licensed Professionals to make requests for existing single residential structures or properties, provided no fill has been placed to raise the elevations of the structure or property. Approximately half of the LOMAs processed annually (about 10,000 cases) meet the requirements of eLOMA. To learn more about eLOMA and to register with FEMA to become an eLOMA Licensed Professional, go to the MIP website at: www.hazards.fema.gov.

FEMA National Flood Hazard Layer

A tutorial video, now available on the NDWR website, shows you how to use FEMA's National Flood Hazard Layer (NFHL) to view FEMA mapped flood zones in Google Earth. The NFHL is a computer database that contains FEMA's flood hazard map information, including Digital Flood Insurance Rate Map (DFIRM) databases and Letters of Map Revision (LOMRs). The NFHL provides DFIRM and LOMR data as one integrated dataset so flood zones may be easily viewed across Flood Insurance Rate Map (FIRM) panel boundaries, with Google Earth satellite imagery as a base layer. You no longer need to obtain individual DFIRM databases or FIRM panels and then locate and integrate the subsequent changes caused by LOMRs. The database is continuously maintained by FEMA and its contractors so updated FIRMs and map revisions are incorporated into the NFHL as the maps become effective. See: <http://fema.maps.arcgis.com/home/webmap/viewer.html?webmap=cbe088e7c8704464aa0fc34eb99e7f3>.

New Flood Awareness Week and new Website

Nevada Flood Awareness Week. With the goal of increasing flood awareness and enabling Nevada citizens to become more flood resilient, the Floodplain Management staff and the multi-agency Nevada Flood Awareness Planning Team - in conjunction with the Nevada Silver Jackets - hosted Northern Nevada's first Flood Awareness Week campaign the week of November 10-15, 2014. This Flood Awareness campaign included a Gubernatorial Proclamation, a press conference with the Governor, FEMA, State and local officials, the creation of an award winning, interactive website (nevadafloods.org), billboard advertisements, radio and television spots, distribution of flyers, brochures and booklets, flood table presentations for communities and schools, social media flood awareness materials posted to Facebook and Twitter, local community sponsored events and City and County flood awareness proclamations. Please visit the new Nevada flood information website at <http://nevadafloods.org/>.

Totalizing Meter Reading Website (available 2nd half of 2015)

The Division is currently working on a new website that will allow the public an additional way to provide their totalizing meter readings. This website will provide the ability to see previous meter readings and information about the totalizing meters that are installed. The website will also provide some permitted water right information tied to the point of diversion (POD) that the totalizing meter is installed at such as the manner of use, location data and the permitted duty. The Division is anticipating this new website will be completed and available to the public in late 2015.

Use of Water For Domestic Purposes

The State Engineer finds it is necessary to remind Nevadans of the limitations on using water from a domestic well. Most domestic well owners in Nevada are aware of the statutory limit of two (2) acre-feet per year on the amount of water that may be used from their well. However, this limitation is only half of the story when it comes to domestic well use under Nevada water law. One must also refer to the statutory definition of domestic use found in Nevada Revised Statute (NRS) 534.013.

NRS 534.013 sets out the limits regarding the use of water from a domestic well. It provides that “domestic use” or “domestic purposes” extends only to culinary and household purposes directly related to a single-family dwelling and an accessory dwelling unit for a single-family dwelling, if provided for in an applicable local ordinance. These purposes may include without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if the amount of water drawn does not exceed the maximum amount of two acre-feet per year set forth in NRS 534.180.

Thus, domestic water use may include a family garden or household pets and even livestock; however, it must be by definition associated with a single-family dwelling or, in the case where “mother-in-law quarters” are allowed by local ordinance, a single family dwelling and accessory dwelling unit.

This means that water use from a domestic well to support a commercial enterprise, such as a horse boarding business or raising produce or livestock for sale, is not considered domestic use and requires that a water right be obtained through the Nevada Division of Water Resources. Indeed, even if produce is being grown for large distribution beyond single-family use, regardless of whether it is for profit or not, it would not fit the definition of domestic use and a water right would be needed. Of course if a residence is being served by a public water supplier, these requirements would not apply.

As Nevada enters its fourth consecutive year of drought, our shared water resources are under increasing pressure from all water users. This pressure brings with it increased scrutiny from other well owners and the general public who are increasingly reporting to the State Engineer incidents of improper water use from domestic wells without benefit of a water right. It is the goal of the State Engineer to conserve, protect and manage Nevada’s valuable water resource and to bring such situations into compliance with Nevada water law. Please feel free to call Division of Water Resources staff with any questions.

Website

The Division’s website is continually updated with news briefs, hearing dates, coming events and new features. The website presents a “live” look at the Division’s Water Rights Database allowing the public to track the progress of pending applications or check the status of existing water rights. Visit us at <http://water.nv.gov>. This database is a very valuable and powerful tool for water right professionals and permittees. The Division strives to make the database as complete and accurate as possible, but mistakes do happen. Please help the Division maintain and improve the database by notifying us of any omissions or errors that you may find. If you have any questions, comments or suggestions regarding the website, please email Brian McMenamy (bmcmenamy@water.nv.gov).